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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,838	09/15/2003	Fred Rascoe	1339.17	8552

7590 03/23/2004

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EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/661,838	<b>Applicant(s)</b> RASCOE ET AL.	
	<b>Examiner</b> Nihir Patel	<b>Art Unit</b> 3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Specification*

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chua et al. US Patent No. 5,626,131 in view of Zdrojkowski et al. US Patent No. 5,803,065. Referring to claim 1, Chua discloses the applicant's invention as claimed with the exception of providing a facemask for receiving air from the source.

Zdrojkowski discloses a breathing gas delivery method and apparatus that does provide a facemask for receiving air from the source (see figure 1). Therefore it would be obvious to modify Chua's invention by providing a facemask for receiving air from the source in order to prevent air from escaping.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chua et al. US Patent No. 5,626,131 in view of Power US Patent No. 5,673,689. Chua discloses the applicant's invention as claimed with the exception of providing a demand valve and an exhalation valve that comprises a piston linearly movable by means of a motor.

Power discloses a piston based ventilator that does provide a demand valve and an exhalation valve that comprises a piston linearly movable by means of a motor (see figure 2). Therefore it would be obvious to modify Chua's invention by providing a demand valve and an exhalation valve that comprises a piston linearly movable by means of a motor in order for the valve to function more quickly and prevent leakage.

Claims 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chua US Patent No. 5,626,131 in view of Servidio et al. US Patent No. 5,927,274.

Referring to claim 3, Chua discloses the applicant's invention as claimed with the exception of providing a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air to the mask.

Servidio discloses a pressure support ventilatory assist system that does provide a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air to the mask (referring to figures 6 through 8; number 160 represents the piston and the section located at the distal end of the piston and close to passage way represents the seat pad; and the section located at number 70 represents the valve seat). Therefore it would be obvious to modify Chua's invention by providing a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air to the mask in order to prevent leakage.

Referring to claim 5, Chua discloses the applicant's invention as claimed with the exception of providing a piston that is housed in a valve body.

Servidio discloses a pressure support ventilatory assist system that does provide a piston that is housed in a valve body (see figures 6-8). Therefore it would be obvious to

Art Unit: 3743

modify Chua's invention by providing a piston that is housed in a valve body in order to have a better control of fluid flow.

Referring to claim 6, Chua discloses the applicant's invention as claimed with the exception of providing a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air from the mask.

Servidio discloses a pressure support ventilatory assist system that does provide a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air from the mask (referring to figures 6 through 8; number 160 represents the piston and the section located at the distal end of the piston and close to passage way represents the seat pad; and the section located at number 70 represents the valve seat). Therefore it would be obvious to modify Chua's invention by providing a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air from the mask in order to prevent air from being trapped in the mask.

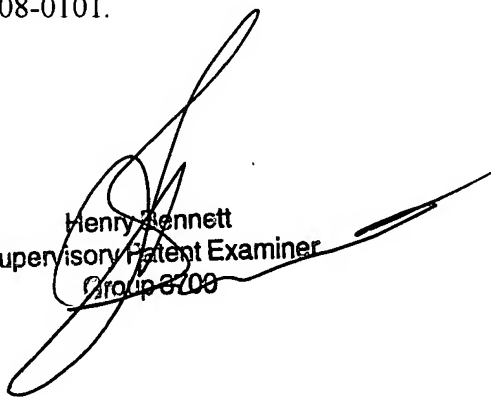
Art Unit: 3743

***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP  
March 18, 2002



Henry Bennett  
Supervisory Patent Examiner  
Group 8700